

REMARKS

1 The Examiner rejected claims 1-8 under 35 U.S.C. § 102(b) as being anticipated
by Elseth (5,621,391). While the applicant respectfully disagrees with the Examiner's
rejections, the applicant has amended claim 1 to expedite the prosecution of the present
5 matter. Claim 1 has been amended to more clearly state that the head member is
"shaped to have a testing arm with a long axis that extends outwardly in different
directions than the long axis of said handle". The figures depict this structural
arrangement. While the figures depict a testing arm having a long axis that extends
perpendicularly from the long axis of the handle, the specification makes it clear that the
10 testing arm may extend outwardly from the handle in a variety of angular orientations.

 Clearly, the structural orientations recited within amended claim 1 are not
anticipated by Elseth. The Examiner identifies the Elseth probe 154 as including an
elongated handle, beginning at end 164, having a long axis that extends between first
15 and second end portions. The Examiner identifies a head member that is coupled to
the elongated handle at a joint 160 and is provided with a sensor 190 for leak detection.
However, the Elseth figures and specification clearly indicate that the head member
identified by the Examiner is not provided with a testing arm, having a long axis that
extends outwardly in different directions than the long axis of the handle identified by
20 the Examiner. Rather, the long axis of both the handle and head members of the Elseth
device are coaxial with one another. Applicant's claimed structural orientation is a
crucial improvement over the art, enabling the device to be used with appliances having
supports that are arranged in manners similar to those depicted in Figures 3 and 4.

1 Accordingly, the Examiner is respectfully requested to reconsider the foregoing rejection and allow amended claim 1.

5 Claim 2 has been cancelled. Claims 3-8 each ultimately depend from amended claim 1 and are believed to be allowable for at least the reasons set forth hereinabove with respect to claim 1. Furthermore, claim 3 adds the limitation that the rearward end portion of the head member is shaped to form an extension arm with a long axis that extends outwardly in different directions than the long axis of the handle. This structural orientation, much like the aforementioned testing arm, is clearly depicted (in a number of preferred embodiments) in Figures 3 and 4. As discussed previously, the structures identified by the Examiner as comprising the Elseth device are linearly oriented in a coaxial fashion. Elseth discloses no extension arms, let alone an extension arm having a long axis that extends outwardly in different directions than the long axis of the handle (which was identified as extending from the first end 164 to the joint 160).

15 Claim 4 depends from claim 3 and is believed to be allowable for at least the reasons set forth with respect to claim 3. Moreover, claim 4 adds the limitation of the head member being shaped to have a lengthening arm having a long axis that extends between the extension and testing arms, as claimed previously. The Elseth head member, which extends from the joint 160 to the tip 172, does not have a testing arm or an extension arm, as claimed by the applicant, let alone a lengthening arm having a long axis that extends between the extension and testing arms. Accordingly, claim 4 is believed to be patentably distinct from the prior art.

1 Claim 5 depends from claim 4 and is believed to be allowable for at least the
reasons set forth hereinabove with respect to claim 4. Claim 5 further adds the
limitation that the long axis of the lengthening arm is generally spaced apart from the
long axis of the handle. As discussed previously, the Elseth device provides different
5 components in a coaxial relationship with one another. Accordingly, even if the Elseth
device disclosed a lengthening arm, its long axis would not be disposed in a spaced-
apart relationship with the long axis of the handle. Accordingly, the Elseth reference
cannot anticipate claim 5, which is believed to be allowable.

10 Claim 6 depends from claim 4 and is believed to be allowable for at least the
reasons set forth hereinabove with respect to claim 4. Moreover, claim 6 adds the
limitation that the testing arm and lengthening arm are positioned with respect to one
another so that the lengthening arm can be selectively disposed along a first side of the
plurality of supports to position a length of the testing arm along a second, rearward
15 side of the one support. As discussed previously, the components of the Elseth device
are oriented in a straight, coaxial relationship with one another. Moreover, the Elseth
device does not teach a testing arm or lengthening arm as claimed by the applicant.
Accordingly, the structural orientation of the Elseth device makes it impossible to
position any portion of the Elseth device along one side of a support while positioning
20 another portion of the Elseth device along a second, rearward side of that same
support. Accordingly, the Elseth reference cannot anticipate the claimed limitations.

25 The Examiner notes that it has been held that a recitation with respect to the
manner in which a claimed apparatus is intended to be employed does not differentiate

the claimed apparatus from a prior art apparatus in a manner that satisfied the claimed structural limitations. Ex Parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). The applicant agrees with the stated rule of law. However, the stated rule of law is inapplicable to claims 6-8, as asserted by the Examiner. In Ex Parte Masham, the Board found that the claimed limitation did not impose any structural limitations upon the claimed apparatus that would differentiate it from a prior art apparatus satisfying the structural limitations of the device being claimed. Accordingly, the subject limitation was deemed to be a recitation of intended use because it imposed no structural limitation. However, in the present matter, claim 6 specifically states that the testing arm and lengthening arm are positioned with respect to one another so that the lengthening arm may be disposed along a first side of a support to position a length of the testing arm along a second, rearward side of the support. Accordingly, the limitation provides a distinct structural limitation that simply cannot be met by a straight testing member, as taught by Elseth. Accordingly, claim 6 is believed to be patentably distinct from the prior art.

Claim 7 depends from claim 4 and is believed to be allowable for at least the reasons set forth hereinabove with respect to claim 4. Moreover, claim 7 adds the limitation that the extending arm and lengthening arm are positioned with respect to one another so that the lengthening arm may be selectively disposed along a first side of one of the plurality of supports to position a length of the extending arm along a second, forward side of the support. This limitation is similar to that found within claim 6. However, it is the structural orientation of the extending and lengthening arms with

1 respect to one another that is being claimed. The straight orientation of the Elseth
testing arm is quite different from the applicant's device as it is structurally claimed.
Accordingly, claim 7 is believed to be patentably distinct from the prior art.

5 Claim 8 also depends from claim 4 and is believed to be allowable for the
reasons set forth hereinabove with respect to claim 4. Moreover, claim 8 specifically
limits the structure of the head member such that the testing arm and lengthening arm
are positioned with respect to one another so that the lengthening arm can be
selectively disposed along one side of a forward support to position a length of a testing
arm along a second, rearward side of that same forward support. Claim 8 further limits
10 the shape of the head member in that the extending arm and lengthening arm are
positioned with respect to one another so that the lengthening arm can be selectively
disposed along one side of a rearward support to position a length of the extending arm
along a second, forward side of the rearward support. The structural limitations provide
15 a fairly complex geometrical shape to the claimed head member. This is quite different
from the straight, elongated head member disclosed by Elseth. Accordingly, claim 8 is
believed to be allowable over the prior art.

20 The Examiner objected to claims 9 and 10 as being dependent upon a rejected
base claim but would be allowable if rewritten in independent form to include all of the
limitations of the base claim and any intervening claims. Claims 9 and 10 each depend
directly from claim 1. Claim 9 has been rewritten as new claim 19 and includes all of
the limitations found within original claims 1 and 9. Likewise, claim 10 has been
rewritten as new claim 20 to include all of the limitations found within original claims 1


1 and 10. Accordingly, new claims 19 and 20 are believed to be in condition for
allowance. Original claims 9 and 10 now depend from amended claim 1 and are
believed to be allowable for at least the reasons set forth hereinabove with respect to
amended claim 1 and their additional limitations. Accordingly, the Examiner is
5 respectfully requested to reconsider original claims 9 and 10 and to allow the same as
they depend from amended claim 1.

As discussed hereinabove, the Examiner is respectfully requested to reconsider
and allow claims 1-10 as well as new claims 19 and 20. Claims 11-18 were found to be
allowable by the Examiner. Accordingly, it is believed that claims 1-20 are allowable.

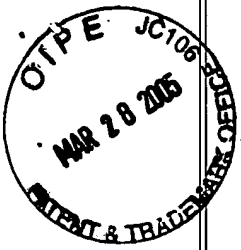
10 In light of the above amendments and remarks, applicant asserts that the claims
are in condition for allowance. Applicant respectfully requests reconsideration and
allowance of the same.

No fees or extensions of time are believed to be due in connection with this
15 amendment; however, please consider this a request for any extension inadvertently
omitted, and charge any additional fees to Deposit Account No. 502093.

Respectfully submitted,

20 
SHANE M. NIEBERGALL
Registration No. 44,974
THOMTE, MAZOUR & NIEBERGALL
Attorneys of Record

2120 S. 72nd Street, Suite 1111
Omaha, NE 68124
(402) 392-2280




1

CERTIFICATE OF MAILING

I hereby certify that the original of this AMENDMENT for SCOTT J. LONG, Serial No. 10/629,964, was mailed by first class mail, postage prepaid, to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 25th day of March, 2005.

5


SHANE M. NIEBERGALL

10

15

20

25